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January 5, 2012

VIA ELECTRONIC AND REGULAR MAIL

Ray Basso
Director, Lower Passaic River Project
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, New York 10007-1866

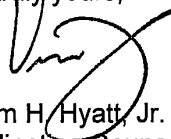
Re: Lower Passaic River Study Area
Administrative Settlement Agreement and Order on Consent for
Remedial Investigation and Feasibility Study, U.S. E.P.A. Region 2
CERCLA Docket No. 02-2007-2009

Dear Mr. Basso:

On behalf of the Settling Parties under the above-referenced Administrative Settlement Agreement and Order on Consent (AOC), enclosed please find an executed copy of your letter dated January 3, 2012 memorializing resolution of certain issues of the dispute resolution process relating to the Risk Assessment and Risk Characterization (RARC) Plan.

Thank you for your attention to this matter.

Very truly yours,



William H. Hyatt, Jr.
Coordinating Counsel

cc: W. Mugdan, Director, ERRD (via electronic mail)
E. Schaaf, ORC (via electronic mail)
S. Vaughn, ERRD (via electronic mail)
S. Flanagan, ORC (via electronic mail)
P. Hick, ORC (via electronic mail)
CPG Members (via electronic mail)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

BY EMAIL AND REGULAR MAIL

January 3, 2012

William H. Hyatt, Jr., Esq.
K & L Gates LLP
One Newark Center, Tenth Floor
Newark, NJ 07102-5285

Re: Diamond Alkali, Lower Passaic River Study Area
Administrative Settlement Agreement and Order on Consent for Remedial Investigation
and Feasibility Study, US. EPA Region 2 CERCLA Docket No. 02-2007-2009

Dear Mr. Hyatt:

The purpose of this letter is to memorialize that the U.S. Environmental Protection Agency ("EPA") and the Lower Passaic River Study Area Cooperating Parties Group ("CPG") have reached a resolution on seven of the issues in the CPG's dispute resolution process on the Risk Assessment and Risk Characterization ("RARC") Plan. The RARC dispute resolution process includes 11 issues, identified in the CPG's letter dated August 12, 2011.

On December 1, 2011, EPA and the CPG met to discuss the 11 dispute resolution issues. On December 5, 2011 EPA sent the CPG a document entitled "EPA Staff Recommended Revisions to Select Comments Disputed by CPG" (the "Recommended Revisions"), enclosed as Attachment A. On December 8, the CPG provided comments on the Recommended Revisions ("CPG Proposed Changes"), enclosed as Attachment B. On December 15, 2011, the CPG submitted to EPA its position on each of the 11 issues by letter enclosed as Attachment C.

Making reference to the attached Recommended Revisions, the CPG Proposed Changes, and the CPG's December 15, 2011 letter, this letter sets out the resolution of Issues 2, 3, 6, 7, 8, 9 and 11. Pursuant to Paragraph 65 of the Administrative Settlement Agreement and Order on Consent ("AOC") for the Remedial Investigation and Feasibility Study of the Lower Passaic River Study Area, CERCLA Docket No. 02-2007-2009, upon the signature of this letter by both EPA and the CPG, this resolution will be incorporated into the AOC.

Issues 1, 4, 5 and 10 remain unresolved as of the date of this letter and will be presented to Walter Mugdan, at the meeting scheduled for January 13, 2012.

Issue #2:

This issue is resolved for purposes of the dispute resolution process, based on the Recommended Revisions addressing the CPG's objections to EPA's Comments 11, 83, 84, 86, 87, and 92, with one further change relating to Comment 86 proposed in the CPG Proposed Changes, which

R2-0022410

requested that EPA apply the Comment 86 Recommended Revision also to Section 1.1, first paragraph, third sentence, which was the subject of EPA Comment 10.

EPA accepts the CPG Proposed Change. The sentence that was the subject of Comment 10 will now read:

“The Lower River Segment (preliminarily defined as RM 0 to RM 6 based on salinity) is characterized as predominantly industrial in the lower river miles (near Newark Bay) and starts to become more commercial, residential, and recreational near RM 4.”

Issue #3:

This issue is resolved for purposes of the dispute resolution process, based on the Recommended Revisions addressing the CPG’s objections to EPA’s Comments 77, 104, 105 and 128, with two further changes, relating to Comment 77 and Comment 128, proposed in the CPG Proposed Changes.

EPA accepts the CPG Proposed Changes to EPA’s Recommended Revisions to Comment 77. The sentence that was the subject of Comment 77 will now read:

“The LPRSA is a large and complex sediment site, and current site conditions reflect its long industrial history and urban setting, although in the future, the river is expected to be used to a greater extent for recreational activities.”

EPA accepts the CPG Proposed Changes to EPA’s Recommended Revisions to Comment 128. The paragraph that was the subject of Comment 128 will now read:

“The NJAC Surface Water Quality Standards classification for the Passaic River from RM 0 to 8 includes secondary contact recreation (e.g., boating and fishing), and from RM8 to 17 includes primary contact recreation (e.g., swimming and wading), among other uses. A number of boating and sculling clubs already make frequent use of the river (Passaic River Rowing Association 2010, Nereid Boat Club 2010) and improvements are being made to boat ramps throughout the 17 miles (e.g., City of Newark 2010; NJDEP Green Acres Program, January 2008). Swimming under current conditions may be limited by the visible deterrents along large sections of the river, including the presence of trash and debris and the generally urban setting of the river. However, once the parks that are already under construction are completed, and when other recreational improvements planned in municipal master plans are undertaken, future conditions are expected to provide greater access to and be more conducive to swimming¹. The exposure times and frequencies summarized in Table 3-4 are designed to reflect both current and future river users. While the number of people utilizing the river in such a way as to be exposed to surface water will likely increase as improvements to the river are made, the exposure times and frequencies for particular individuals already utilizing the river in these ways are not expected to increase.”

EPA has also accepted the CPG Proposed Changes to EPA’s Recommended Revision addressing the CPG’s objections to Comment 104, as stated below in the discussion of Issue 8.

¹ The national average for time spent swimming is 2.6 hours/day.

Issue #6:

This issue is resolved for purposes of the dispute resolution process. EPA has agreed to allow the CPG to use a cooking loss for crabs of 20% for PCBs under the CTE scenario. Subsequent to the December 1, 2011 meeting with EPA, the CPG has sent about 50 studies to EPA which the CPG deems relevant to the issue of cooking loss. EPA agrees to review and discuss with the CPG the studies as they relate to cooking loss for the CTE scenario only.

Issue #7:

This issue is resolved for purposes of the dispute resolution process. EPA and the CPG have agreed that the residential scenario will be evaluated qualitatively rather than quantitatively in the risk assessment. Results from the recent sampling of the recreational fields may be considered in the qualitative evaluation. This scenario will need to be evaluated quantitatively at some point in the future.

Issue #8:

This issue is resolved for purposes of the dispute resolution process based on the Recommended Revisions addressing the CPG's objections to EPA's Comments 104, 105 and 128, with two further changes, proposed in the CPG Proposed Changes.

EPA accepts the CPG Proposed Changes to EPA's Recommended Revisions to Comments 104 and 105. The section that was the subject of Comments 104 and 105 will now read:

"3.3.4.2 Swimmer

It is assumed that recreational users of the LPRSA may occasionally engage in swimming in the river. Recreational swimmers include children (1 to 6 years), adolescents (7 to 18 years), and adults (>18 years). Given the visible deterrents to swimming along large sections of the river, including the presence of trash and debris and the generally urban setting of the river, the exposure frequency and duration for swimming is assumed to be relatively low, both currently and in the future. To be clear, the number of exposed individuals will likely increase as improvements to the shoreline and river are made, but the exposure frequency and duration for some individuals already engaging in this scenario are not likely to increase. It is assumed that the current/future swimmer may be exposed to COPCs in sediment and surface water while swimming via:

- Direct Contact (incidental ingestion and dermal contact) with near shore river and mudflat surface sediment;
- Direct contact (incidental ingestion and dermal contact) with river surface water; and
- Inhalation of COPCs that may volatilize into outdoor air from exposed mudflat sediment and/or surface water.

Note that swimming is included in New Jersey's designated uses of the freshwater portion of the river from the confluence with Second River to Dundee Dam (RM 8 – 17), where the water has a classification of FW2-NT/SE2, though this stretch of the river frequently does not meet the standards associated with this classification. While the lower portion of the river is not currently

classified as suitable for swimming, New Jersey can change the classification as conditions warrant. The applicability of the swimming scenario throughout the LPRSA will be evaluated as part of the risk assessment, as discussed in Section 3.3.5 of this report.”

EPA has also accepted the CPG Proposed Changes to EPA’s Recommended Revisions to Comment 128, as stated above in the discussion of Issue 3.

Issue #9:

This issue is resolved for purposes of the dispute resolution process based on the Recommended Revision addressing the CPG’s objections to EPA’s Comment 78.

Issue #11:

This issue is resolved for purposes of the dispute resolution process. EPA has agreed that the CPG may leave the mummichog testable risk question as it appears in the RARC Plan, consistent with the wording in the Problem Formulation Document. The CPG has agreed that egg numbers from the literature will be presented in the baseline ecological risk assessment to provide context for evaluating the Passaic River numbers.

Conclusion

To confirm that the statement above accurately sets forth the CPG’s position, EPA requests that the CPG sign this letter on the signature line provided below. EPA recognizes that the CPG has agreed to the resolution of these issues for purposes of the dispute resolution process, while continuing to assert that it does not agree with the substance of EPA’s position, as set forth in the attached CPG letter dated December 15, 2011.

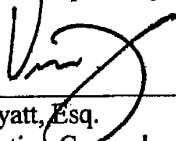
Sincerely yours,



Ray Basso
Director, Lower Passaic River Project

cc: W. Mugdan, ERRD
E. Schaaf, ORC
S. Vaughn, ERRD
S. Flanagan, ORC
P. Hick, ORC

Accepted and Agreed to
on behalf of the Cooperating Parties Group by:



William H. Hyatt, Esq.
CPG Coordinating Counsel